IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE

Writ Petition No. 4044 of 2007

Pravin Laxman Patil ..Petitioner

vs.

1.Smt.Anandi Anant Patil & Ors. ..Respondents

Shri A.J.Joshi for petitioner.
Shri D.V.Siroya for respondents

CORAM: S.C.DHARMADHIKARI J.
11th **July, 2007**

P.C.

1. The petitioner is the original defendant in Reg.Civil Suit No.82 of 2005.

2. The respondents are the original plaintiffs.

3. The original plaintiffs in the above suit applied for interim injunction restraining the petitioner/defendant from disturbing their possession in respect of the suit property. That injunction was denied in as much as the application in that behalf came to be rejected on 3rd March, 2006.

4. Aggrieved by that rejection Misc.Civil Appeal No.31 of 2006 was preferred which has been allowed by the impugned order and that is how the original defendant is before me.

5. The Court below, has upon material produced, found

that the predecessor in title of the appellant before it (original plaintiff) was in possession and the documents evidence this fact prima facie. It is in these circumstances the Trial Court's order was set aside and the appeal was allowed.

6. Both sides do not dispute that the revenue entries are subject matter of challenge in the proceedings under the Land Revenue Code and even the Appellate Court's order shows that some appeal is pending. It is contended by Mr.Joshi that there is no appeal against the order of the Commissioner which is referred to in the impugned order. He submits that the order passed by the Commissioner in appeal no.156 of 2004 has become final. However, what is pending before the Government is an appeal against the order refusing to insert the name of the respondents in the crop column.

7. Be that as it may, the order under challenge and the observations therein does not finally decide the rights of the parties in the pending suit. The Trial Court has rejected the application for interim relief since both sides are claiming to be in possession as encroachers on the Government land. It would have been just, fair and proper for the lower Appellate Court not to have granted the injunction as prayed while allowing the appeal. The lower Appellate Court considering the rival contentions

ought to have directed that statusquo at site should be preserved and protected till hearing and final disposal of the suit. I have perused the petition and the annexures thereto including the impugned order. In my view, interest of justice would be subserved and both sides would be sufficiently protected if instead of the Trial Court's order being reversed in toto and an injunction granted, the same is substituted by a direction to both sides to maintain the status quo at site. Needless to state that the status quo on the site prevailing today shall be maintained till hearing and final disposal of Reg.Civil Suit No.82 of 2005.

8. Considering that both sides are claiming to be in possession through the original occupants/encroachers on the Government land, it would be fair, just and proper to direct that the hearing of reg.Civil Suit No.82 of 2005 is expedited. The learned Trial Judge to endeavour and dispose of the suit within a period of one year from the date of receipt of the copy of this order. Pending hearing and final disposal of the suit, both sides are directed to maintain status quo as of today. Liberty is, however, reserved to both sides to apply for modification of this order in case pending proceedings are disposed of. Such application shall be considered uninfluenced by any observations in the impugned order so also this Court's order and on its own merits and in accordance with law.

Writ petition is disposed of in the above terms with no order as to costs.

(S.C.DHARMADHIKARI J.)